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MEMO ENDORSED

December 20, 2013

VIA ECF

Honorable Louis L. Stanton
United States Courthouse
500 Pearl Street
New York, NY 10007

**RECEIVED IN CHAMBERS
OF LOUIS L. STANTON**

DEC 20 2013

UNITED STATES DISTRICT JUDGE

Re: Broadcast Music, Inc. v. Pandora Media, Inc., 13 Civ. 4037 (LLS)

Dear Judge Stanton:

We write on behalf of Petitioner Broadcast Music, Inc. ("BMI") requesting clarification of Your Honor's endorsement (ECF No. 78) of the letter submitted by Pandora Media Inc. ("Pandora") on December 19, 2013 (ECF No. 75).

Consistent with the December 18, 2013 Opinion & Order (ECF No. 74) (the "Order"), Your Honor's endorsement of Pandora's letter states that "[p]resently-existing Article XIV/interim licenses are included in, and protected by, the final paragraph of the December 18, 2013 order; the rights they grant are not to be altered retroactively except by fee-setting procedures under Art XIV(B). Nothing in the opinion impairs their validity." This endorsement reiterates that the rights of BMI licensees are not to be altered retroactively.

Pandora intends through its letter to extend the rights granted to Pandora under its interim agreement with BMI. BMI is seeking clarification that, consistent with the negotiated interim license between BMI and Pandora—pursuant to which Pandora is paying interim fees—the right to publicly perform withdrawn compositions is not included.

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BMI sent the attached interim license agreement to Pandora, which provides in paragraph four that

[t]he Parties agree that the above formula for the payment of Interim Fees shall account for the withdrawal of certain publishers' catalogs from the BMI repertoire for the uses BMI is licensing pursuant to the Application and this letter agreement. Notwithstanding the foregoing, during the Interim Fee Period, in the event that additional music publishers withdraw from BMI the right to license their musical works to Pandora, the Parties agree to negotiate in good faith to adjust the Interim Fees payable commensurate with such publisher withdrawal, provided, however, that if the Parties are not able to arrive at a negotiated adjustment to the Interim Fees within 60 days from the commencement of such negotiations, then either Party may terminate this letter agreement upon written notice to the other Party, with such termination effective as of the date of receipt of such notice, following which either Party may apply to the BMI Rate Court for determination of new interim and/or final license fees pursuant to Section XIV of the BMI Consent Decree.

Although BMI never received an executed interim license from Pandora (*see* Declaration of Joseph J. DiMona (ECF No. 52), ¶ 34), Pandora's CEO, Joseph Kennedy, stated in his declaration that "[e]arlier this year, Pandora and BMI agreed on interim license fees for the period effective January 1, 2013. I executed this agreement on behalf of Pandora" (ECF No. 24, ¶ 9). Moreover, Pandora has been paying fees consistent with the interim agreement BMI sent Pandora, including a credit adjustment for the withdrawn works of Sony/ATV Music Publishing and EMI Music Publishing. Accordingly, BMI seeks clarification that this Court's Order does not expand rights granted to Pandora under its interim agreement, and that the right to publicly perform withdrawn compositions is not included within the scope of Pandora's interim license.

Very truly yours,

/s/ Scott A. Edelman
Scott A. Edelman

Based upon that document's recognition of the publishers' withdrawal, its elimination of a portion of the fees "commensurate with" the withdrawn works, and BMI's representations that the parties are performing it, neither that agreement nor the December 19 and 20, 2013 Orders give Pandora the right publicly to perform withdrawn compositions. Louis L. Stanton 12/20/13